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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,351	01/31/2001	Daniel H. Maes	00.22US	5974

7590 12/12/2001

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EXAMINER

WILLIS, MICHAEL A

ART UNIT PAPER NUMBER

1619

DATE MAILED: 12/12/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

<b>Application No.</b> 09/773,351	<b>Applicant(s)</b> MAES ET AL.
<b>Examiner</b> Michael A. Willis	<b>Art Unit</b> 1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 05 October 2001.
- 2a)  This action is FINAL.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-20 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other:

### **DETAILED ACTION**

Applicant's amendment of 5 October 2001 is entered. Claims 1-20 are pending. Any previous rejections that are not restated in this Office Action are hereby withdrawn. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Response to Arguments***

The specification is objected to for reasons as stated in a previous Office Action. The objection was not traversed in applicant's response of 5 October 2001. Therefore, the objection is maintained.

Claim 18 is rejected under 35 USC 112, second paragraph, as being indefinite for reasons as stated in a previous Office Action. The rejection was not traversed in applicant's response. Therefore, the rejection is maintained.

Claim 19 is rejected under 35 USC 112, first paragraph, for reasons as stated in a previous Office Action. The rejection was not traversed in applicant's response. Therefore, the rejection is maintained.

The rejections based on Sebag et al (US Pat. 5,411,742) are withdrawn due to applicant's argument that there is no reason for one of ordinary skill in the art to believe that the particular salicylic derivatives of the reference have exfoliant activity.

Claims 1-20 are rejected under 35 USC 103(a) as being unpatentable over Ribier et al (US Pat. 5,650,166) in view of Subbiah (US Pat. 6,150,381) for reasons as stated in a previous Office Action. Applicant argues that the present invention is a simple mixture of exfoliant and cholesterol sulfate while the cited references are directed at lipid vesicles that encapsulate an aqueous active ingredient. Applicant argues that a lipid vesicle is not a mixture of components. Applicant asserts that a mixture of components is a random solution of components unlike a vesicle which is a discrete arrangement of its components. Therefore, applicant argues that lipid vesicles do not render obvious a mixture of components.

Applicant's arguments have been fully considered, but are not convincing. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the feature upon which applicant relies (i.e., a random organization of the components) is not recited in the rejected claims nor is it taught in the specification. The specification teaches that the "combination of these two components can be applied in any type of cosmetically or pharmaceutically acceptable vehicle for topical application with which the active component is compatible" (page 5, lines 12-13 of the instant application). It is the position of the examiner that a mixture as claimed encompasses both random solutions of components as well as discretely arranged components such as vesicles and their encapsulated ingredients.

### ***Conclusion***


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Willis whose telephone number is (703) 305-1679. The examiner can normally be reached on Mon. to Fri. from 9 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L. Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2742 for regular communications and (703) 308-2742 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

  
Michael A. Willis  
Examiner  
Art Unit 1619

December 10, 2001

  
MICHAEL G. HARTLEY  
PRIMARY EXAMINER